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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,389	01/22/2004	Michael T. Rossi	A8708	2413
23373	7590	12/27/2005	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			KANG, JULIANA K	
			ART UNIT	PAPER NUMBER
			2874	

DATE MAILED: 12/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/761,389

Applicant(s)

ROSSI, MICHAEL T.

Examiner

Juliana K. Kang

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10/19/05 (amendment).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26, 27, 29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26, 27, 29, 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

1. Applicant's communication filed on October 19, 2005 has been carefully studied by the Examiner. The arguments advanced therein, considered together with the amendments made to the claims are not persuasive. This action is made final.

2. Currently claims 26, 27, 29 and 30 are pending claims.

The serial number placed on the top left corner of the response filed on October 19, 2005 is incorrect.

### ***Specification***

3. The amendment filed October 19, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the newly recited term, active, is not supported by the original disclosure. Furthermore the Examiner is not sure what it means by physically active. Please note that the original specification discloses physically detectable binder also includes color markings within the binder but in the arguments submitted on October 10, 2005 in page 4 last two three lines states that the simple coloration is not physically active but is passive.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 26, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al (U.S. Patent 6,243,519 B1, previously relied upon).

Ishikawa et al teach an optical fiber cable comprising a color tape, metal tape or the like indicative of the position attached onto a binder tape wound about the outer periphery of optical fiber so that the binder tape is detected (see column 2 lines 4-7). Ishikawa et al do not use the term "flexible" but since the binder is wound around the fiber bundle it has to be flexible. Ishikawa et al teach placing the indicator on the binder tape but do not teach that the detectable features are positioned within the binder. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the physically detectable features within the binder to reduce manufacturing costs and it also has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. Also please note that the limitation "detectable" is a recitation of the intended use and the limitation "an automated detection system" is not a positively recited limitation because it follows the intended use recitation.

6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al and further in view of Tsunoda (JP 1-138520).

As described above Ishikawa et al teach the claimed invention except fluorescing elements. Tsunoda teaches using fluorescent material on the surface of the tape shaped covering layer provides easier recognition of the identification marks of the

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optical fibers. Since Ishikawa et al also teach using other than color or metal, using fluorescent elements in Ishikawa et al as taught by Tsunoda would have been obvious to one having ordinary skill in the art at the time the invention was made for easier recognition of the identification marks.

### ***Response to Arguments***

7. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Arroyo (U.S. Patent 5,305,410) teaches using a strip of magnetic

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material that helically wounds around the optical cable core for remotely detecting the cable.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Juliana K. Kang whose telephone number is (571) 272-2348. The examiner can normally be reached on Mon. & Thur. 8:00-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rod Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**JULIANA KANG**  
**PRIMARY EXAMINER**

*Juliana Kang*  
12/23/05